UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Askeladden L.L.C.,
Petitioner

v.

Calabrese Stemer LLC,
Patent Owner

Case: IPR2024-00368
Patent No. US 8,783,564 B2

Patent Owner's Response to Objections

Patent Owner herewith responds to Petitioner's Objections to Evidence dated March 6, 2025.

The several objections pertained to Patent Owner's Declaration, Exhibit 2001, served on March 4, 2025.

FRE 402

Petitioner's objection should be overruled. Petitioner objects to the evidence as not being relevant for the failure, on Patent Owner's part, of not having demonstrated the nexus between the secondary considerations of Exhibit 2001 and the patent-at-issue. Patent Owner clearly and unambiguously demonstrated the nexus by explaining that Patent Owner

licensed each of the licensees listed in the Declaration with regard to all three of the related patents upon which the related IPRs (IPR2024-00367, -368, -369) were filed. See, Patent Owner's Sur-Reply, at 19-21.

FRE 403

Petitioner's objection should be overruled. Petitioner presents the same argument as in the objection under FRE 402. The nexus is very clearly established, as explained above. Further, the probative value of the information in Exhibit 2001 is not outweighed by a danger of unfair prejudice. Petitioner is not prejudiced by the filing of the exhibit. Also, the information does not confuse the issues, as it goes directly and unambiguously to the heart of the central issue. Nor was the evidence presented with undue delay. Instead, the evidence responded directly to Petitioner's Reply. The presentation of the evidence does not waste time, nor is the evidence cumulative.

FRE 802

Petitioner's objection should be overruled. Exhibit 2001 is not hearsay. It is instead a declaration by a principal party to the license contracts referred in the declaration, namely, by Patent Owner Calabrese Stemer LLC. The license contracts referred to in the declaration are business records that are kept by the declarant in the ordinary and regular course of business.

FRE 1002

Petitioner's objection should be overruled. Exhibit 2001 represents the best evidence that Patent Owner is contractually enabled to submit. The concurrently filed supplemental evidence – a redacted copy of an active

license – shows that Patent Owner is sworn to confidentiality "under a protective order or confidentiality agreement and pursuant to an 'Outside Counsel Eyes Only' or higher confidentiality designation."

Patent Owner submits that striking Exhibit 2001 would in effect tend to foreclose Patent Owner from satisfying the fourth prong of the *Graham* test, namely, to submit evidence of secondary considerations. *Graham v. John Deere Co.* 383 U.S. 1 (1966).

37 CFR §§ 42.23(b), 42.53(b)

Petitioner's objections should be overruled. Exhibit 2001 is in support of a direct response to Petitioner's Reply, as noted above. The declaration is not "uncompelled direct testimony." Instead, the declaration was filed to accompany Patent Owner's Sur-Reply, which responded to details of argumentation presented, for the first time, in Petitioner's Reply.

Relief Requested

Petitioner's objections should be overruled and the supplemental evidence should be entered into the record.

Respectfully submitted,

/Werner H. Stemer/
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March 12, 2025